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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF OREGON**

12 DOUGLAS G. MAIER,)
13 Plaintiff,) Case No. 98-1095-ST
14 v.) **AFFIDAVIT OF MARK ROCKWELL**
15 PACIFIC HERITAGE HOMES, INC., an) In Support of Motion for Summary
16 Oregon corporation, PACIFIC SANTA FE) Judgment
17 CORPORATION dba PACIFIC LAND)
18 MANAGEMENT, INC., and MARK)
19 ROCKWELL,)
20 Defendants.)

21 I MARK ROCKWELL, being first duly sworn, deposes and states as follows:

22 1. I am named as an individual defendant in this matter and am President of Pacific
23 Heritage Homes, Inc. and Pacific Santa Fe Corporation. I make this affidavit of my own personal
24 knowledge, and if called as a witness, am competent to testify hereto.

25 2. Defendant Pacific Heritage Homes is winding down its operations. During plaintiff's
26 employment, Pacific Heritage Homes was engaged in the business of production homebuilding. It

1 bought property in its name for the purpose of building homes and then selling those homes to home
2 owners. Due to the lack of profitability of Pacific Heritage Homes, it was in the fall of 1998
3 determined that it would wind down its business and the company is in the process of doing so.

4 3. Pacific Santa Fe is an Oregon corporation has never been engaged in the business of
5 production homebuilding. Rather, Pacific Santa Fe is in the business of real estate development.
6 Specifically residential land development, multifamily and light industrial development. Pacific Santa
7 Fe's residential land development does not include home construction.

8 4. Pacific Heritage Homes and Pacific Santa Fe are separate and independent corporate
9 entities.

10 5. Pacific Santa Fe has never been a party to any contract of employment with plaintiff.

11 6. I participated in contract negotiations between plaintiff and Pacific Heritage Homes. I
12 was acting within the scope of my authority as President of Pacific Heritage Homes when I did so, and
13 I so advised plaintiff. I signed the employment contract on behalf of Pacific Heritage Homes as its
14 President.

15 7. Plaintiff's paychecks were issued by Pacific Heritage Homes. Plaintiff's W2 forms
16 were issued by Pacific Heritage Homes. Plaintiff was never paid or employed by Pacific Santa Fe
17 Corporation.

18 8. Pacific Heritage Homes made no profit during plaintiff's tenure as its Vice
19 President/General Manager. In fact, it lost money.

20 9. I decided to terminate plaintiff's employment in late September 1997. My decision
21 was based upon the evaluation performed by Jerrold A. Boscoe, along with my own observations
22 regarding plaintiff's inability to successfully perform the requirements of his position. In particular, I
23 believed (1) that plaintiff lacked the financial background and knowledge necessary to run a company,
24 (2) that plaintiff's writing skills were lacking, (3) that plaintiff had made poor business decisions
25 regarding Pacific Heritage Homes' key project, the Jones Farms Development, (4) that plaintiff's skills
26 were better suited to producing custom homes at higher costs and less restrictive budgets rather than

1 production home operations which must operate at much narrower margins and (5) that plaintiff's
2 approach to many aspects of the business was not sufficiently planned or deliberative.

3 10. I informed plaintiff of my decision on September 23, 1997. On that date, I presented
4 plaintiff with a proposed separation agreement. Plaintiff indicated that he wanted to think about the
5 proposed agreement. A few days later, plaintiff made a counteroffer requesting additional benefits, to
6 which I agreed. On September 26, 1997, I, on Pacific Heritage Homes behalf, and plaintiff signed the
7 severance agreement as amended at plaintiff's request.

8 11. Pacific Heritage Homes has fulfilled its duties and obligations under the severance
9 agreement.

10 DATED this ____ day of June, 1999.

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12
13 _____
MARK ROCKWELL

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15 The foregoing instrument was acknowledged before me on this ____ day of June, 1999.

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NOTARY PUBLIC FOR OREGON
18 My Commission Expires: _____
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